BEFORE THE ARBITRATOR

In the Matter of the Petition of

CITY OF STOUGHTON

To Initiate Arbitration Between Said Petitioner and

STOUGHTON DISPATCHERS ASSOCIATION, WISCONSIN PROFESSIONAL POLICE ASSOCIATION/LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION

Case 31
No. 62483
INT/ARB-9957
Dec. No. 30736-A

Appearances:

Mr. Thomas W. Bahr and Mr. Paul Negast, Bargaining Consultants, for Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, 340 Coyier Lane, Madison, WI 53713 appearing on behalf of the Stoughton Dispatchers Association.

Mr. Thomas R. Crone, for Melli, Walker, Pease & Ruhly, S.C., Attorneys at Law, Ten East Doty, Suite 900, P.O. Box 1664, Madison, WI 53701-1664, Mr. Patrick O'Connor, Police Chief, and, Ms. Luann Alme, City Clerk, appearing on behalf of the City of Stoughton.

ARBITRATION AWARD

The City of Stoughton, herein the City, is a municipal employer maintaining its offices at 381 East Main Street, Stoughton, WI. The Wisconsin Professional Police

Association/Law Enforcement Employee Relations Division, herein the Association, is a labor organization maintaining its offices at 340 Coyier Lane, Madison, WI. At all times material herein the Association has been and is the exclusive collective bargaining representative of a bargaining unit consisting of all dispatch employees of the City's Police Department.

The parties exchanged their initial proposals and bargained on matters to be included in the successor collective bargaining agreement. On June 20, 2003 the City filed with the Wisconsin Employment Relations Commission (herein the Commission) a petition to initiate interest arbitration. On August 6, 2003 a member of the Commission's staff conducted an investigation which reflected that the parties were deadlocked in their negotiations. By October 27, 2003 the parties submitted their final offers to the Commission. On November 5, 2003 the Commission ordered that arbitration be initiated for the purpose of issuing a final and binding award to resolve the impasse existing between the parties. The Commission furnished the parties with a panel of arbitrators for the purpose of selecting a single arbitrator to resolve said impasse. On November 18, 2003 the Commission appointed the undersigned as arbitrator in this matter.

Hearing was held on April 7, 2004 in Stoughton, WI. At the hearing the parties were afforded the opportunity to present evidence and witnesses and to make arguments. A transcript was taken of the hearing. The parties filed post-hearing briefs by May 12, 2004.

FINAL OFFERS:

The sole issue before the arbitrator is wages. The offers of both parties cover the calendar years of 2003 and 2004. Further, the parties have agreed to replace the salary grid, or matrix, in the previous contract with a wage schedule containing a starting rate and four annual steps to reach the maximum rate. The previous salary grid required five years to reach the maximum rate.

Association:

The Association developed its schedule by increasing the top hourly rate paid to the most experienced dispatchers (i.e., $18.64) by 3% and then backing up by 3% for each step to calculate the starting rate and intervening annual steps, so that each employee would receive a wage increase of at least 3% in 2003. The Union proposed a 3% increase in each rate of the wage schedule in the second year of the contract.

City:

For the first year of the contract the City proposed a 5.8% increase in the starting wage rate and a 6.5% increase in the maximum rate of the prior wage schedule. In the second year of the contract the City proposed a 3% increase in each step of the wage schedule. However, for employees already receiving wage rates above the new top rates, the City proposed a $500 lump sum payment in each year of the contract in lieu of an increase in the employee's current wage rate.

Arbitral Criteria:

Section 111.70(4)(cm) MERA states in part:

7. 'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

7g. 'Factor given greater weight.' In making any decision under the arbitration rocedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and give greater weight to economic conditions in the jurisdiction of the municipal

employer than to any of the factors specified in subd. 7r.

7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours conditions of employment of other employees performing similar services.

e. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.

f. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.

g. The average consumer prices for goods and services, commonly known as the cost of living.

h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pension, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding,

arbitration or otherwise between the parties, in the public service or in private employment.

POSITION OF THE ASSOCIATION:

There is a lack of external comparables for the City's proposed wage freeze for some of the employees. None of the contracts for the agreed upon external comparables contained a wage freeze. While two of the City's other bargaining units agreed to a wage freeze in their settlements, the settlement with the police employees was similar to the Association's proposal. That settlement is the appropriate internal comparable and it supports the Association's proposal. Further, the wage freeze would produce a change in the structure of the wage schedule.

Although the bargaining unit employees are well compensated in comparison to their peers, nothing in the record justifies a freeze of their wage rates with only a small off-schedule payment. There is no compelling justification for the City's proposal. One group of employees will always be the wage leader and there is no basis to remove these employees from that position.

Arbitrators consistently require that three conditions be met when a party proposes to change an existing provision in a collective bargaining agreement. In this case the City failed either to offer any quid pro quo in exchange for the wage rate freeze, or, to show support for the change among the comparables, or, to show a compelling need for the change. Thus, the City's proposal fails to meet those requirements.

POSITION OF THE CITY:

Dane County is not an appropriate external comparable since it has a much larger population than both the City and the other agreed upon external comparables.

The City's proposal raises the wage scale to front runner status while also addressing the

problem of the wages of dispatchers who have been red circled since 1997, because of being significantly overpaid in comparison to dispatchers in comparable communities.

The lump sum payment to the dispatchers who are significantly over market is no different than what was done in two other bargaining units with similar situations. Although the lump sum payment is a smaller percentage than the increase in the cost of living, the dispatchers would continue to receive higher wages than are received by dispatchers in comparable communities. The Association's proposal exacerbates the wage disparity problem by increasing by 3% the wage rate already most out of line with the comparables.

There is nothing in the record to support the Association's proposal to put the dispatcher wage rates more than $300 above the average of the comparables. Neither does the record justify the Association's proposal for a 19.9% increase in the starting rate and an 18.7% increase in the top rate of the wage schedule in the first year of the contract.

DISCUSSION:

The parties agree that the municipalities of Fitchburg, Middleton, Monona and Sun Prairie are appropriate comparables. The Association would include Dane County also. The arbitrator does not find Dane County to be an appropriate comparable, because the population of Dane County is substantially larger than the population of both Stoughton and the other four agreed upon external comparables.

The record is clear that, even under the City's offer, the top wage rate for the City's dispatchers would continue to be above the average top rate for the external comparables for 2003, although the City's offer would result in the Sun Prairie four year rate becoming equal to the four year rate for the City's dispatchers at $17.24.

The undersigned is aware of cases referring to the concept that a quid pro quo should be offered when a change in the collective bargaining agreement is sought. In this case, the

parties have already agreed to modify the wage schedule from the schedule in the previous contract by reducing the time to reach the maximum rate from five years to four years. The 1997-99 contract covering the dispatchers provided a lump sum payment of $500 in each of the three years of that contract, in lieu of a percentage wage increase, to those employees whose wage rates were above the top wage rate of the then existing schedule. The 2000-2002 contract provided the same across the board percentage increases to all four of the City's bargaining units. Thus, the parties do not have a consistent form of prior wage settlements. If the schedule had remained unchanged over a period of several preceding contracts and if there had been a long standing pattern of percentage wage increases, then a quid pro quo might have been more appropriate. In addition, the Association also substantially altered the increments in the wage schedule structure by basing its proposed maximum rate on a 3% increase in the above schedule rate being received by the four top paid dispatchers and then working backward to compute a starting rate, rather than applying a percentage to each of the rates in the schedule in the prior contract. Under the Association's proposal, each dispatcher would receive a minimum increase of 3%, although some would receive a greater increase, while the wage schedule minimum would increase by 19.9% and the maximum would increase by 18.7% from the prior contract.

The City acknowledges that its proposal of a $500 lump sum payment is less of a percentage increase in wages, i.e., 1.4%, than the increase in the cost of living for either 2002 or 2003 for the five dispatchers who would be red circled in 2003 under its proposal. However, when the wage increase of 7.8%, excluding the step increase, for the sixth dispatcher (CJ) is included, then the average increase for the six dispatchers becomes 2.4%, rather than 1.4%. Said percentage does exceed the cost of living increases of 1.6% in 2002 and 2.3% in 2003. When the same calculation is applied to the Association's proposal, the result is an average wage increase of just over 5.5%, again excluding the step increase for CJ and also a larger increase for KG. If an increase for KG of 10.6%, rather than 3%, is included in the computations, then the average wage increase in 2003 would rise to 6.78%. The undersigned is not persuaded that the external comparables support an average increase in the amounts generated by the Association's

proposal. While the City's offer results in one external comparable, i.e., Sun Prairie, gaining parity at the four year rate in 2003, the dispatchers would remain well ahead of the dispatchers at the other three comparables. As of July 1, 2003 the City's offer results in a top rate $1.53 above the average of the top rates for the other three external comparables.

The schedule proposed by the Association results in an average wage increase considerably greater than simply 3%. If the Association had intended both to modify the wage schedule and to provide an average wage increase, excluding step increases, of 3%, then it should have utilized a different method to construct its wage schedule. The Association's proposal would not only grant a minimum increase of 3% to each dispatcher in 2003, but it also would establish a revised wage schedule with a maximum rate equal to the top wage rate received by four of the six dispatchers thereby resulting in increases well above 3% for two of the six dispatchers. An alternative approach would have been to apply a smaller percentage to the revised schedule. Further, the Association's proposal results in the proposed top rate in 2003 being $3.11 an hour above the average top rate for the four external comparables including the Sun Prairie four year rate and being $3.49 an hour above the average top rate for the three comparables excluding the Sun Prairie four year rate. In view of those amounts, the external comparables provide greater support to the City's proposal.

The Association argues that its offer continues the trend to reduce the size of the differential between the City's dispatchers and the next highest comparable from what the differential was in 1997, but does so at a less dramatic rate than the City is attempting in its proposal. Even assuming that argument to be accurate, such a comparison to only one comparable is insufficient to justify the wage rates proposed by the Union.

The internal comparables are mixed. Employees in one of the City's other bargaining units received only the $500 lump sum payments in both 2003 and 2004. In another unit some of the employees received the $500 lump sum payment, while other employees in that unit received wage rate increases. The third unit, i.e., the police officers, received

wage rate increases of 4.8% in the start rate and of 7.5% in the top rate on a new schedule which reduced from five years to four years the time needed to reach the maximum rate, just as was done in the revised schedule for the dispatchers. The City asserted that those increases were necessary to achieve market catch-up for the police officers. There is no evidence in the record to contradict that assertion. The Association contends the police unit has the greatest community of interest with the dispatchers and is the appropriate internal comparable. The undersigned is not persuaded that the City's other two bargaining units are any less appropriate internal comparables. Thus, the internal comparables do not provide controlling support for either offer.

The Association contends that the City could have proposed an across the board wage increase smaller than 3%, rather than a lump sum payment, as a way of slowing the rise in the wage rates. Similarly, the Association could have proposed an across the board increase of less than 3% in an attempt to avoid a lump sum payment.

This decision would have been easier if either the City's wage offer was higher or the Association's wage offer was lower. However, the undersigned must chose one of the two offers and does not have the ability to fashion a different wage schedule. It is concluded that the City's offer has more support from the evidence in the record and more closely meets the statutory criteria.

After full consideration of the testimony, exhibits and arguments of the City and the Association and their relevance to the statutory criteria in 111.70(4)(cm)7, the undersigned enters the following

AWARD

That the final offer of the City shall be incorporated into the 2003-2004 collective bargaining agreement between the parties.

Dated at Madison, Wisconsin, this 19th day of June, 2004.

Douglas V. Knudson, Arbitrator